of having hit her. The brig ought not to be held liable to bear the risk of the voluntary act of the schooner, adopted for the benefit of the schooner, and having no connection with the question of any benefit to the brig.

There must be a decree for the libellants with costs, and a reference to a commissioner to ascertain the damages sustained by them by means of the collision in question.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW HAMPSHIRE.[1]

SUPREME COURT OF NEW YORK.[2]

AGENT.

Proof of Agent's Authority.—Where a special agent is employed to accomplish a particular purpose, a party seeking to make the principal liable for the acts of the agent, must prove what the authority of the agent was; and the principal may disprove it: *Fish et al.* v. *Davis*, 62 Barb.

Declarations of Agent.—A principal is not estopped by the declarations of his agent as to his authority: *Id.*

Ratification by Principal.—Where it is sought to bind the principal by reason of his having ratified the acts of the agent, it is essential to give effect to the ratification, that it should have been done with full knowledge of all the facts: *Id.*

ATTORNEY.

Authority of.—When a suit is brought by an attorney of this court in regular standing his authority will be presumed until the contrary is shown. *Town of Lisbon* v. *Holton*, 50 or 51 N. H.

When a committee assuming to act under a vote of the town directed a suit to be brought, and it was brought, and service made on January 27, 1871, and the town at its annual meeting in March following, with a knowledge of what had been done, appointed an agent to carry on the lawsuit with G., "and all other lawsuits now pending with said town," and with a knowledge that the action was to be entered on the third Tuesday of the same March, there was no dissent by the town or the selectmen to the suit, it was *held* that was evidence of a ratification of the authority of the attorneys: *Id.*

1 From the Judges; to appear in 50 and 51 N. H. Reports.
2 From Hon. O. L. Barbour; to appear in Vol. 62 of his reports.

BANK.

Authority of Cashier.—Ordinarily the cashier of a bank has no authority to discharge its debtors without payment; or to bind the bank by an agreement that a surety should not be called upon to pay a note he had signed; or that he would have no further trouble from it. *Cochico National Bank* v. *Hasbik*, 50 or 51 N. H.

If upon inquiry by the surety the cashier of a bank informs him that the note is paid, intending that he should rely upon his statement, and the surety does so, and in consequence changes his position by giving up securities, or endorsing other notes for the same principal, or the like, the bank will be estopped to deny that such note is paid: *Id.*

BANKRUPTCY.

Discharge cannot be invalidated in State Court.—A discharge under the U. S. Bankruptcy Act cannot be invalidated in a State Court, on the ground that the bankrupt fraudulently concealed assets. The remedy provided for such a case by Sec. 34 of the U. S. Bankrupt Act is exclusive.—*Parker* v. *Atwood*, 50 or 51 N. H.

COMMON CARRIERS.

Liability as a Carrier of Freight; Default of Connecting Lines.—Where a railroad company in Georgia, whose road terminated at Atlanta, where it connected with the Western and Atlantic railroad, received at one of its stations, fifty-eight bales of cotton consigned to parties in New York, and gave the consignors a receipt specifying that the cotton was "to be transported in turn to K. & C., New York." It was *held*, this was a special contract on the part of the company to carry the property to New York; and made it liable, not only for its own default, but for that of the other carriers on the line, and accountable for the value of a portion of the cotton destroyed by fire while in the possession of the Western and Atlantic Railroad Company, to whom it had been delivered for transportation: *King et al.* v. *Macon and Western Railroad Co.*, 62 Barb.

CONSTITUTIONAL LAW.

Taking of Private Property—Damages from Overflow of Water in Consequence of the Taking.—A corporation was authorized by the legislature to construct a railroad upon paying to each land-owner the damages occasioned to him by the construction of the railroad over his land. Damages for the construction of the railroad over the land of the plaintiff, Eaton, were duly assessed and paid. Northerly of Eaton's land, there was a ridge completely protecting his meadow from the effect of floods and freshets in an adjacent river. The corporation in constructing their road made a deep cut through the ridge, through which cut the waters of the river in floods and freshets sometimes flowed,

carrying sand, gravel and stones through the cut and depositing them upon Eaton's meadow. No part of the ridge was upon Eaton's land. *Held*, that Eaton had received no compensation for damages occasioned to his land by the construction of the road over the land of another; that the flowage in the manner described has a "taking" of Eaton's land within the meaning of the Constitution; that, if the legislature intended to authorize such taking, the act was *pro tanto* unconstitutional, containing no provision for compensation; and that the corporation were liable for the damages thus occasioned, although they may have constructed their road at said cut with due care and prudence: *Eaton* v. *Boston, Concord & Montreal Railroad*, 50 or 51 N. H.

Contract.

Illegal Business.—The defendants kept a billiard saloon, and a bar for the sale of liquor. The liquor traffic was illegal. The plaintiff was employed by the defendants to work generally in and about the saloon; there was no special agreement that he should or should not sell liquor, or as to what particular duty he should do; but he was accustomed to work generally in and about the saloon, taking care of the room, building the fires, taking care of the billiard tables, tending at the bar, and waiting upon customers; in the absence of the defendants he had the whole charge of the business. The plaintiff, at the time he entered into the service of the defendants, knew what business was carried on there.

In assumpsit upon a *quantum meruit*; it was *held*, that the plaintiff could not recover compensation for any portion of his services: *Bixley* v. *Moor*, 50 or 51 N. H.

Criminal Law.

Trespass.—Where the complainant entered peaceably on the land of the respondent, and is discovered there not committing any violence, a request to depart, and a refusal to do so, is necessary before the defendant can justify a resort to force to expel him: *State* v. *Woodward*, 50 or 51 N. H.

Purchase of Liquor.—The purchaser of liquor, sold in violation of the statute, is not guilty of a criminal offense, and cannot be excused from testifying as to the purchase: *State* v. *Rand*, 50 or 51 N. H.

Sale of Liquor—Evidence.—An indictment for being common sellers of "spirituous liquors," does not charge the respondents with being common sellers of ale, porter and cider; and evidence of sales of ale, porter and cider is not admissible under such an indictment: *State* v. *Adams*, 50 or 51 N. H.

Debtor and Creditor.

One claiming property of a deceased person, under a transfer invalid as against creditors, is not affected by a decree of the Pro-

bate Court, charging the administrator with the property: *Cross* v. *Brown*, 50 or 51 N. H.

Evidence.

Monuments of land boundaries.—Monuments must control courses and distances, even if it cause a wide departure from them: *Coburn* v. *Coxeter*, 50 or 51 N. H.

If in any case the course and distance can be allowed to control the monuments, it can only be when from the terms of the deed the intention is manifested so strongly, as to indicate a mistake in the description of the monument: *Id.*

When the termination of one line is indicated only by the course named in the deed, but the termination of the next line is an ascertained monument at a given distance and course from the termination of the preceding line, the precise location of the latter may be determined by reversing the course of the succeeding line, and measuring back the distance called for: *Id.*

A conveyance of a strip of land itself, in explicit terms, with a restriction that it shall be used only for a road, is nevertheless a grant of the fee, and not of a mere easement: *Id.*

Husband and Wife.

In New Hampshire, a divorce *a vinculo* bars dower: *Gleason* v. *Emerson*, 50 or 51 N. H.

Insurance.

Proofs of Loss—Waiver of Defects in Form of.—Where the insured, within the time limited, furnished the agent of the insurer with the preliminary proofs of the loss, and they were received without objection to their sufficiency and objection to the payment of the loss afterward were put upon other grounds, *held*, that the defects in the proofs must be regarded as waived: *Taylor* v. *Roger Williams Ins. Co.*, 50 or 51 N. H.

Held, also, that the waiver would extend to the case, where instead of the certificate of the nearest magistrate, as the rules required, a certificate of a reputable citizen not a magistrate was received and assented to by the agent of the insurer as sufficient: *Id.*

The instructions to the jury that if the assent to this certificate was procured by the false representations of the insured, it would be of no avail, were correct: *Id.*

The opinion of a witness, not an expert, as to the value of a stock of goods in a store, is not admissible; and whether he is an expert or not, is a question of fact for the judge who tries the cause, and not subject to revision: *Id.*

Railroads.

General Laws Respecting.—The general railroad laws of this State are to be construed harmoniously as respects their various

provisions, and strictly as to the rights of the parties: *Matter of the New York and Boston Railroad Company*, 62 Barb.

By conforming to the provisions of those laws, corporations may acquire a title in fee to lands necessary for their purposes against the will of the owners. But corporations must conform to such provisions before they can acquire any title or rights thereto: *Id.*

A fair construction of those laws will require a chronological fulfillment of their provisions: *Id.*

Notice to Occupants of Filing Map and Profile.—The right to the written notice required by the act of the legislature of 1871 to to be given the actual occupants of the land over which the route of a proposed railroad is designated on the map and profile filed, of the time and place such map and profile were filed, and that the route thereby designated passes over the lands of such occupants, is a right given to each owner by the statute, and it is not for a corporation or court to deprive him of it: *Id.*

If the occupant does not take the necessary steps within fifteen days to secure a review or alteration of the route, the route may be considered settled, and his right thereafter to object to its location as lost: *Id.*

Consequences of Omitting to take the Necessary Steps.—If a railroad company fails to comply with the necessary prerequisites for obtaining the apppointment of commissioners of appraisal, it does not secure the right to have the property condemned against the opposition of its owner: *Id.*

Liability to an Employee for Misplacement of a Switch.—A railroad company is not liable to a fireman in its employ for an injury occasioned by the misplacement of a switch, in consequence of which misplacement the locomotive runs off the track, instead of running upon another track, where such misplacement is not traced to the company, or either of its employees: *Tinney, adm'x* v. *Boston and Albany Railroad Co.*, 62 Barb.

There is no rule in this State, holding that a railroad company is bound to furnish a safe road-bed, or, in default thereof, that it is liable to one of its employees, occasioned by such default: *Id.*

Stamp.

Stamp affixed by Collector after making of Note.—A promissory note to which the stamp required by law has been affixed by the collector of the revenue of the proper district, subsequent to the time of making or issuing such note, is as valid to all intents and purposes as if stamped when the note was made or issued; and consequently is admissible, as evidence of the existence of the debt represented thereby: *Aldrich* v. *Hagan*, 50 N. H.

Town.

Selectmen—no authority to borrow money.—In New Hampshire, selectmen have not authority, *ex officio*, without a vote of

the town, to borrow money upon the credit of the town: *Rich* v. *Errol* 50 or 51 N. H.

The *bona fide* holder of a note given by selectmen in the name of the town cannot recover against the town by proving merely that the note was given for money which the selectmen professed to borrow for the use of the town. He must further show, either that the borrowing was authorized by a vote of the town, or that the money loaned came to the use of the town: *Id.*

TRESPASS.

Action by Riparian Owner.—The owner of the soil in flat lands adjoining the shore of a navigable stream, over which the tide ebbs and flows, may maintain an action of trespass against one who, without his consent, enters upon and uses the same for fishing purposes, driving stakes therein, and mooring his boats there, and occupying the soil in drawing in seines and nets, so as to interfere with the right of the plaintiff therein: *Whittaker* v. *Burham*, 62 Barb.

VENDOR AND PURCHASER.

Where vendors refuse to deliver to the purchasers the property sold, and sell the same to other persons, this renders it unnecessary for the purchasers to offer to pay the unpaid portion of the purchase price, before suing for damages: *Hawley et al.* v. *Keeler et al.*, 62 Barb.

Delivery of Goods.—In an action to recover the price of goods sold and delivered on credit, there was no evidence to show any agreement about the delivery of the property by the vendor for the purchaser, or as to the manner in which, or the time when it was to be made; or that the purchaser ever received the goods; or that he knew that they had been, or were to be, delivered to a railroad company for him. *Held* that in the absence of some order or agreement on the part of the purchaser, to have the property sent to him by railroad, or of some evidence in regard to usage or the course of trade, from which an agreement to have it so sent might be inferred, a delivery to the railroad company was no delivery to the purchaser: *Everett et al* v. *Parks*, 62 Barb.

Where the complaint is for goods sold and delivered, without proof of delivery, the cause of action stated in the complaint, and upon which issue is taken, is not made out. If the defendant does not appear on the trial, and therefore waives nothing, and there is no evidence in respect to a delivery, a judgment in favor of the plaintiff should be reversed for that reason: *Id.*

Fraud—Duty of Vendor.—If a seller knows of a defect in his property which the buyer does not know, and if he had known would not have bought the goods, and the seller is merely silent, his silence, although a moral, is not a legal fraud: *Howell* v. *Biddlecom*, 62 Barb.

The common law does not oblige a seller to disclose all that he

knows which lessens the value of the property that he would sell. He may be silent, leaving the purchaser to inquire and examine for himself, or to require a warranty. But if, by acts or words, he leads the buyer astray, inducing him to suppose that he buys with warranty, or otherwise preventing his examination or inquiry, this becomes a fraud of which the law will take cognizance: *Id.*

Where, upon the purchase of a horse by the plaintiff of the defendant, the former did not trust to the assertions of the latter, but took a man of skill with him to examine the horse, and it was, after such examination, and after the defects known to the seller had been disclosed, that the sale was consummated, *Held*: that under these circumstances the purchaser had no remedy for alleged fraud upon the sale: *Id.*

BOOK NOTICE.

A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS. By John F. Dillon, LL. D., Circuit Judge of the United States for the Eighth Judicial Circuit, Professor of Law in the University of Iowa, and late one of the Justices of the Supreme Court of Iowa. Chicago: James Cockcroft & Company. 1872.

"The City of London," says Lord Campbell, "had hitherto been a sort of free republic in a despotic kingdom, and its privileges had been respected in times of general oppression." What was true of London in the time of Henry III. is still so far true of cities in this remote time and country that they are "a sort of free republics," though whether their privileges are respected, in any proper sense, in this day of legislative commissions, is much more questionable. The English municipal corporation, with privileges derived from ancient charters, and still more from usage and prescription, is the parent of our system of municipal corporations in this country, but a brief glance at Judge Dillon's book forcibly reminds us of the wonderful dissimilarity to which the children have grown.

We have here a good book upon an important subject, and indeed we may say a good book on a new subject, for any one who reads a few chapters—as for example chapter XIX. on Municipal Taxation and Local Assessments, or chapter XXIII. on Civil Actions and Liabilities—will speedily perceive that the identity of English and American municipal corporations terminates with the name.

One entire branch of the law treated by Judge Dillon is not only new but of the utmost importance—the law governing mu-